

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Madeleine Clayton 06/17/2002
Departmental Forms Clearance Officer
Office of the Chief Information Officer
14th and Constitution Ave. NW.
Room 6086
Washington, DC 20230

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for approval of a revision of an information collection received on 04/26/2002.

TITLE: Atlantic Highly Migratory Species Vessel Permits

AGENCY FORM NUMBER(S): None

ACTION : APPROVED WITHOUT CHANGE

OMB NO.: 0648-0327

EXPIRATION DATE: 06/30/2005

BURDEN:	RESPONSES	HOURS	COSTS(\$,000)
Previous	25,000	4,700	628
New	23,359	4,668	631
Difference	-1,641	-32	3
Program Change		500	27
Adjustment		-532	-24

TERMS OF CLEARANCE: None

OMB Authorizing Official Title

Donald R. Arbuckle Deputy Administrator, Office of
Information and Regulatory Affairs

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request	2. OMB control number b. <input type="checkbox"/> None a. _____ - _____
3. Type of information collection (<i>check one</i>) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested (<i>check one</i>) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated 5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No 6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
7. Title	
8. Agency form number(s) (<i>if applicable</i>)	
9. Keywords	
10. Abstract	
11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. <input type="checkbox"/> Individuals or households d. <input type="checkbox"/> Farms b. <input type="checkbox"/> Business or other for-profit e. <input type="checkbox"/> Federal Government c. <input type="checkbox"/> Not-for-profit institutions f. <input type="checkbox"/> State, Local or Tribal Government	12. Obligation to respond (<i>check one</i>) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>) a. <input type="checkbox"/> Application for benefits e. <input type="checkbox"/> Program planning or management b. <input type="checkbox"/> Program evaluation f. <input type="checkbox"/> Research c. <input type="checkbox"/> General purpose statistics g. <input type="checkbox"/> Regulatory or compliance d. <input type="checkbox"/> Audit	16. Frequency of recordkeeping or reporting (<i>check all that apply</i>) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission) Name: _____ Phone: _____

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)	
Signature	Date
Signature of NOAA Clearance Officer	
Signature	Date

**SUPPORTING STATEMENT
HIGHLY MIGRATORY SPECIES VESSEL PERMITS
OMB CONTROL NUMBER 0648-0327
Renewal and Revision to Collection**

Section A. Justification

This statement is submitted in support of a renewal with changes to an information collection subject to the Paperwork Reduction Act (PRA) that has been previously approved by the Office of Management and Budget (OMB). This revision would extend the Atlantic tunas Angling category permit to include fishermen who fish for all Atlantic highly migratory species (HMS), including swordfish, sharks, and marlins.

1. Explain the circumstances that make the collection of information necessary.

This Supporting Statement is submitted as part of a Paperwork Reduction Act (PRA) request to renew and revise a current information collection that was approved under OMB control #0648-0327. The existing collection consists of a mandatory annual vessel permit program in the commercial and recreational fisheries for Atlantic tunas (bluefin, bigeye, albacore, yellowfin and skipjack) as well as, a mandatory annual vessel permit program for charter/headboats fishing for or retaining Atlantic HMS. Permits may be obtained through the mail, or through an automated phone system (1-888-872-8862) or an internet site administered by Commerce One, Inc. under contract to National Marine Fisheries Service (NMFS).

NMFS requests a revision to the collection to expand the requirement for the recreational Atlantic tunas annual vessel permit to all recreational vessels fishing for or retaining Atlantic HMS. Currently, recreational vessel owners fishing for tunas must obtain a permit in the Atlantic tunas Angling category in order to lawfully fish for, or retain, any or all of the tunas referenced above. Under the revised requirement, a permit would be issued for the Atlantic HMS Angling category in lieu of the tuna permit. Such a permit would be inclusive of all HMS and would authorize recreational fishing operations for Atlantic HMS.

The purpose of this collection of information is to comply with the United States' obligations under the Atlantic Tunas Convention Act of 1975 (ATCA; 16 U.S.C. 971), and the Secretary of Commerce's obligations under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), and the implementing regulations at 50 CFR part 635. ATCA requires the Secretary of Commerce to promulgate regulations adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT). As a member nation of ICCAT, the United States is required to take part in the collection of biological statistics for research purposes (fishing effort and catch). In addition to this requirement, the United States, as one of the several member nations fishing for bluefin tuna, blue and white marlins, and swordfish in the Atlantic Ocean, must abide by the specific catch quotas or caps assigned to it by ICCAT. Other current ICCAT recommendations pertain to limiting fishing effort directed at, or catch of,

bigeye, albacore and yellowfin tunas and blue and white marlins. As the Atlantic tunas, swordfish, billfish and shark fisheries are also managed under the MSFCMA, several of these fisheries are subject to restrictive catch quotas with the goal of recovering the stocks to a level commensurate with maximum sustainable yield. These stocks are fully fished or overfished at this time.

Section 971d(c)(3) of the ATCA provides the statutory authority to require permits and the collection of information necessary to implement the recommendations of ICCAT. Section 303(b) of the MSFCMA also provides statutory authority to require vessel permits for fisheries governed by management plans issued by the Secretary of Commerce.

2. Explain how, by whom, how frequently, and for what purpose the information will be used.

The information collected by telephone, internet or on a hard copy permit application includes:

- (1) Vessel owner, corporate status and address/phone
- (2) Vessel name, registration, and port
- (3) Vessel characteristics and construction type
- (4) Atlantic Tunas/HMS permit history and gear category
- (5) Signature and payment/delivery information

The automated permitting systems (telephone and website) are administered by Commerce One, Inc. under contract to NMFS and fees are collected through credit card transactions. Paper applications are also processed through the same database management application but checks and money orders are processed through a NOAA lock box.

Collection of information through annual vessel permits provides current information on the vessel owners participating in the Atlantic HMS recreational and “for-hire” sector of the Atlantic HMS fisheries and in the Atlantic tunas fisheries, thus facilitating quota monitoring necessary to avoid exceeding catch quotas for tunas and swordfish and landings caps for marlins. A current permit list aids NMFS in the communication of fishery regulations (management program brochures, fish identification guides, regulatory compliance guides). More importantly, a permit “universe” facilitates collecting catch and effort information about recreational fisheries, as required by law. NMFS constructs sample frames for dockside and telephone surveys from the permit list and uses the list to select vessels for logbooks and/or at-seas observers. Such surveys, logbooks and observer reports provide essential information for management of the Atlantic tunas and HMS fisheries in the United States, particularly in terms of allocation decisions which follow ICCAT and MSFCMA recommendations (allocate fishing opportunities consistent with traditional fishing patterns and considering the economic values to various user groups). NMFS operates a mandatory angler catch reporting program for bluefin tuna that is linked to the permit number to avoid false reporting and facilitate enforcement. NMFS proposes to extend that program to include landings of swordfish and billfish. NMFS also requires that vessel permits

be displayed to dealers and that permit numbers be recorded on dealer reports in order to validate landings of HMS (for commercial permits).

Another purpose of the vessel permit requirement is that it serves as a useful tool in support of enforcement of fishery regulations. That is, the permit can be revoked as a penalty for a violation of fishery conservation measures. Often, this is a more effective tool than a monetary fine.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

This collection involves the use of automated systems for both telephone and Internet applications for vessel permits. Both systems are available on a 7 day/24 hour basis, and are available at no charge to the angler. Hard copy applications can be obtained directly from the internet site or through the mail via an automated internet or phone request.

The system combines public and private infrastructure to issue about 25,000 permits annually and is paid for by the permittees. The automated permitting system provides a spectrum of user friendly pathways based on different information technologies to obtain information about the fishery and changes in regulations, obtain the latest application forms, pay for and receive permits, and report recreationally landed bluefin tuna. A vessel owner can track the application process and permit status via the internet. Once application processing is complete, a permit can be printed off the website or faxed or mailed back to the vessel owner. The program has dramatically increased on-time delivery of permits to the constituents by offering innovative delivery methods.

4. Describe efforts to identify duplication.

With regard to this renewal with changes and *recreational* permits, there are no other Federally-issued recreational permits that Angling category permit holders would have to purchase. There may be state permits they must purchase if they want to fish recreationally in state waters for certain species. In addition, recreational HMS vessels may participate in other federally-regulated commercial fisheries (i.e., NE multi-species) for which permits are issued. However, there is a need to develop a specific list of vessels active in the HMS fisheries. Such fishery-specific information for recreational fishermen can be obtained in a more efficient manner through a separate HMS recreational permit.

With regard to Atlantic tunas commercial and Atlantic HMS charter/headboat permits, there may be state permits they must purchase if they want to fish in state waters for certain species. In addition, Atlantic tunas commercial and Atlantic HMS charter/headboat vessels may participate in other federally-regulated commercial fisheries (i.e., NE multi-species) for which permits are issued. However, there is a need to develop a specific list of vessels active in the HMS fisheries. Such fishery-specific information for fishermen can be obtained in a more efficient manner

through a separate HMS recreational permit. However, NMFS is investigating means to consolidate the permitting process so that permits for multiple fisheries may be issued/renewed through a single application process (one stop shopping).

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

Annual vessel permitting does not have a significant impact on small businesses, organizations or government bodies. The permitting process is estimated to be an average burden of only 30 minutes per initial application and 6 minutes per renewal.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

If this information collection were not conducted, the United States would continue to have difficulty in complying with international obligations under ICCAT, possibly resulting in violations of ICCAT catch recommendations. ICCAT penalties may include reduction in the assigned country catch quota equal to a minimum of 125% of the excess harvest. In addition, trade restrictions may be imposed on countries that fail to restrict catch to the level of the assigned quotas. This is particularly important for those species for which an international rebuilding program is in place such as bluefin tuna, swordfish, and blue and white marlins.

Determining the status of the Atlantic HMS resources would be less accurate without this information, since all contracting parties to ICCAT must submit catch and effort information on an annual basis. Without such catch and effort statistics, the conservation and management objectives of ICCAT with respect to the tuna and swordfish rebuilding programs could be jeopardized. Furthermore, it would be difficult for the United States to formulate domestic policy consistent with the MSFCMA, which must be based on sound socio-economic and biological data and analyses. NMFS would be less able to prepare documents such as the RIR, EIS, etc., as required under the MSFCMA, National Environmental Policy Act (NEPA), and other applicable laws.

Collection of information on HMS fisheries participants less frequently than annually does not provide the up-to-date sampling frame that is the basis for fleet size calculations used for annual catch and effort estimates. Many vessels change hands or are moved from year to year. Annual permitting thus provides a more accurate vessel list and facilitates quota monitoring and data collections necessary to meet ICCAT obligations. This is particularly applicable in the growing recreational swordfish fishery.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

The collection of information will be made in a manner consistent with OMB guidelines.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

In 1998-1999, during the comment period for Amendment One to the Fishery Management Plan for Atlantic Billfish and the Fishery Management Plan for Atlantic Tuna, Swordfish, and Sharks, NMFS solicited comments on a recreational fishing permit requirement. Comments received included support for better monitoring of recreational landings which is the end result of this collection. Other comments specifically supported a recreational permit requirement for billfish and other highly migratory species fishermen. A comment was also received at that time expressing concern about the lack of NMFS resources to analyze data collected by reporting requirements. NMFS, however, would use permit universe data regularly to evaluate rulemaking impacts and to monitor landings. Anticipating the need for a future permit requirement, NMFS included this provision in the framework of both fishery management plans. NMFS will accept comments again on this issue, in conjunction with the proposed rule comment period. Comments may be submitted via fax or mail or at the three scheduled public hearings.

At a recent informal meeting with recreational swordfish fishermen (October 2001), fishermen indicated support for monitoring fishery landings through telephone surveys. Developing the permit universe is the first step in establishing a telephone survey directed at this universe and estimating their avidity for swordfish fishing.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

There are no payments or other remunerations to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

There is a PRA statement printed on notification materials (letter to permit holders, application forms, internet site). It is NOAA policy to preserve the confidentiality of information submitted under this reporting requirement, except that NMFS may release such information in aggregate or summary form, such that individual identifiers are not disclosed (NAO 216-100). Information such as the number of permit holders and what states they reside in is often provided in the annual SAFE Report, in FMP regulatory amendments and supporting documents and to the public upon specific request.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

No questions of a sensitive nature will be asked.

12. Provide an estimate in hours of the burden of the collection of information.

In calendar year 2001, the total number of permits issued/renewed was 22,359. Of these, 17,529 permits were renewals. For the renewals, 5,617 were renewed by the automated telephone system and 11,801 were renewed over the website either directly by the vessel owner or with the assistance of a customer service representative. For the new permits, 4,695 were processed electronically. Overall, 99 percent of responses were collected electronically.

Based on expected renewals for Atlantic tunas and Atlantic HMS permits (6 minutes per response * 17,529) and an estimate of 1000 new applications for this program change (30 min. per response*1000) and a constant number of new applicants for other permit categories (30 minutes per response*4830 new other permits), NMFS expects 23,359 permits (17,529 + 1000 + 4830) to be issued as stated in the table below. The universe of affected anglers could include the following: the 12,811 vessels currently permitted in the Atlantic tunas Angling (recreational) category and approximately 10,000 billfish anglers (minimum estimate based on the number of billfish tournament anglers from Fisher and Ditton, 1992). The extent of the overlap between these groups is unknown. NMFS estimates that approximately 90 percent of these will overlap. Thus the universe of affected vessel owners is likely to be smaller than the sum of the above estimates, as only one permit would be required for participation in any HMS recreational fishery.

Permit Type	New Permits (@30 min)	Renewals (@6 min)	Total
<i>Existing Program</i>			
Permits	4,830	7,831 + 9,698	22,359
Burden	2,415 hours	783 + 970 hrs	4,168 hours
<i>Incremental Burden from HMS Angling Category Revision: Program Change</i>			
Additional Permits	1,000	n/a	1,000
Incremental Burden	500 hours		500 hours
<i>Total Revised Burden</i>			
Total			
Permits	5,830	17,529	23,359
Burden	2,915 hours	1,753 hours	4,668

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection.

An administrative cost recovery fee of \$27 is currently charged for the annual permit for Atlantic tunas vessels and would be charged for the HMS Angling category permits. Total costs to the public are estimated at \$630,693 per year for the application processing fee. Internet or toll-free phone renewals (99% of renewals) incur no additional costs but postage or phone charges would accrue to respondents submitting new or renewal applications by mail or fax. Applicants may receive the completed permit by mail or fax at no additional charge, but express mail delivery incurs an additional \$3.55 processing and mailing fee. Year-to-date respondents for 2001 are about 99% by phone or web site. Therefore, it is estimated that about 0.5% of applications will be sent by mail at a cost of \$0.50 each response (0.5% of 23,359), and an additional 0.5% of respondents (0.5% of 23,359) will request express delivery at \$3.55 per response. Total costs to the public including fee and postage and handling are thus estimated at \$473 (\$58 by mail + \$415 by express delivery). The amount due to the program change is 27,020 (\$27,000+17.75 express mail+ 2.50 mail). The amount due to adjustment is \$23,619.

14. Provide estimates of annualized cost to the Federal government.

Annualized cost to the Federal government can be obtained by multiplying the fee for the Commerce One contract of \$40,721/mo by 12 months = \$488,652. Additional costs of about \$135,000 per year are incurred by NMFS for contract management and occasional activities in support of the information postings on the website (i.e., updates to regulations, catch limits, fishing seasons). The total costs amount to about \$27 each for the anticipated 23,359 permits for the 2001 fishing year. NMFS will recalculate total costs on an annual basis and determine average costs based on the actual number of permits issued. The cost recovery fee will then be adjusted as required.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

This request contains a +500 program change for the new requirement extending the recreational permit requirement to all HMS anglers.

This request also contains a -532 hour adjustment due to a re-estimate of the number of permits to be issued under existing requirements.

16. For collections whose results will be published, outline the plans for tabulation and publication.

No publication of information is planned other than annual summary tables of the total number of permits issued by category, state and primary gear type. Such tables may appear in reports to ICCAT, Stock Assessment and Fishery Evaluation reports, Environmental Assessments, Regulatory Impact Reviews, etc.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

The control number and expiration date for OMB approval are displayed on all hardcopy forms (applications and/or instructions) and under the permit information screen on the web site.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

There are no exceptions.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.



NATIONAL OCEANIC & ATMOSPHERIC ADMINISTRATION ATLANTIC TUNAS & ATLANTIC HIGHLY MIGRATORY SPECIES PERMIT APPLICATION



(READ INSTRUCTIONS PRIOR TO COMPLETING THE INITIAL APPLICATION)

SECTION 1 – OWNER INFORMATION

Owner Type (choose one): ☐ Individual ☐ Partnership ☐ Corporation

Owner or Corporation Name (if more than one individual, circle name of primary contact): _____

Street Address: _____

City: _____ State _____ Zip _____

Daytime Phone: _____ Evening Phone: _____ Fax: _____

SECTION 2 – VESSEL INFORMATION

Vessel Name (if vessel is unnamed, write “unnamed”): _____

Coast Guard Documentation Number: _____ State Registration Number: _____

Home Port: _____ (City, State) Principal Port, if different: _____ (City, State)

Vessel Length: _____ (to nearest foot) Year Built: _____

Crew Size: _____ Construction: ☐ Wood ☐ Fiberglass ☐ Steel ☐ Other

Gross Tonnage: _____ Propulsion: ☐ Gasoline ☐ Diesel ☐ Other

Main Engine Horsepower: _____ Hold Capacity, if applicable: _____ (pounds)

Number of Passengers licensed to carry for Charter/Headboat: ☐ 6 or less OR Number, if more than 6: _____

SECTION 3 – ATLANTIC TUNAS & HMS CATEGORY INFORMATION

Category (check only one)

- ☐ Atlantic HMS Charter/Headboat
- ☐ Atlantic HMS Angling (Recreational).....
- ☐ Atlantic Tunas General.....
- ☐ Atlantic Tunas Harpoon
- ☐ Atlantic Tunas Longline.....
- ☐ Atlantic Tunas Trap

Primary Gear Type (check only one)

- ☐ Rod & Reel ☐ Handline ☐ Bandit gear
- ☐ Rod & Reel ☐ Handline
- ☐ Rod & Reel ☐ Handline ☐ Harpoon ☐ Bandit gear
- (Harpoon only)
- (Limited Access: Longline only)
- ☐ Pound Net ☐ Fish Weir

SECTION 4 – OWNER'S SIGNATURE The undersigned is the owner or legally-authorized agent of the owner of the vessel named in Section 1 above. Issuance of a permit in one of the commercial categories (categories other than Angling) subjects a vessel to applicable requirements of the Fishing Vessel Safety Act of 1988 (46 CFR 25.28). Call the U.S. Coast Guard for details (see instructions for phone numbers).

Signature: _____

Date: _____ Print Name: _____

SECTION 5 – PAYMENT/DELIVERY INFORMATION: There is a \$27.00 fee for the Atlantic tunas & HMS permits. Note delivery surcharge below. Mail this application and payment to: **NOAA, 21056 Network Place, Chicago, IL 60673-1210**

☐ Check if paying by money order (**payable to NMFS Permits**)

☐ Check if paying by credit card and fill out the information below:

Credit Card Type (check one): ☐ Visa ☐ MasterCard ☐ Discover ☐ American Express

Account Number: _____ Expiration Date (MM/YY): _____

Card Holder Name: _____ Signature: _____

Billing address for credit card, if different than address above: _____ Date: _____

DELIVERY OPTIONS (CHECK ONE):

☐ Send permit by Priority Mail at additional charge of \$3.90

☐ Fax permit to number indicated in Section 1

☐ Send permit by regular mail

☐ I will print my permit from the Internet once processed

FEDERAL ATLANTIC TUNAS & ATLANTIC HMS CHARTER/HEADBOAT PERMIT APPLICATION INSTRUCTIONS

An Atlantic tunas permit is required to fish commercially (EXCEPT FOR Charter/Headboats) for bluefin, yellowfin, bigeye, albacore, and skipjack tunas. All owners/operators of charter/headboat and recreational vessels fishing for and/or retaining regulated Atlantic Highly Migratory Species (Atlantic tunas, sharks, swordfish and billfish) in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, must obtain an Atlantic Highly Migratory Species (HMS) Charter/Headboat or a HMS Angling category permit. This HMS Angling category permit has replaced the Atlantic tunas Angling category permit, and incorporates those vessels targeting other regulated HMS. Please complete the attached application/renewal form and return to the address indicated at the bottom of the form. If your application/renewal, including payment, is complete, your permit will be mailed, faxed, or available to print (depending on your preferred delivery method) within 3 business days. Questions on the permit application/renewal process, call (888) 872-8862; for tuna fisheries regulations: (978) 281-9260; for Fishing Vessel Safety Act regulations: (617) 223-8315.

The following information is provided to help you complete the application/renewal form.

- A permit may be owned by more than one person, but the owner information should match the owner information on the vessel's state registration or U.S. Coast Guard documentation. If more than one person is listed, please indicate the person who will be the primary point of contact for the permit.
- If you would like your permit faxed, please indicate the appropriate fax number in Section 1 and select the fax option in Section 5. If you would like to print your permit from your printer via the Internet (www.nmfspermits.com) once the permit is processed (approximately 3 business days), select the print option in Section 5.
- If your vessel is unnamed, write "unnamed" in the space for Vessel Name in Section 2.
- The vessel's home port refers to the port where the vessel is located for most of the year. The principal port refers to the port where the majority of the vessel's landings occur. The vessel's home and principal port may be different.
- If your vessel is constructed of more than one material, choose "other". Please check only one box.
- You do not need to submit copies of state registration or U.S. Coast Guard documentation as NMFS no longer requires submission of copies with the permit application. However, a copy of the vessel's valid U.S. Coast Guard documentation or, if not documented, a copy of its valid state registration must be carried on board the vessel and must match the information on the Atlantic tunas or Atlantic HMS permit.
- For vessels owned by a partnership or corporation, you do not need to submit a copy of the letter of partnership or articles of incorporation, but you are advised to maintain the corporate or partnership document in your files and must furnish the document to NMFS upon request.
- For Atlantic HMS Charter/Headboat permits, you do not need to submit a copy of a captain's license as NMFS no longer requires submission of a copy with the permit application. However, while persons aboard a vessel that has been issued an Atlantic HMS Charter/Headboat permit are fishing for or are in possession of Atlantic tunas, sharks, swordfish, and/or billfish, the operator of the vessel must have a valid Merchant Marine License or Uninspected Passenger Vessel License, issued by the U.S. Coast Guard; **this license must be carried on board the vessel.**
- Commercial vessels are subject to the Fishing Vessel Safety Act of 1988. For information, contact the U.S. Coast Guard office in your district:

Maine to New York	(617) 223-8315	South Carolina to Florida	(305) 536-5091
New Jersey to North Carolina	(757) 398-6304	Gulf of Mexico	(504) 589-4999
- You may select only ONE permit category. After you choose your category, you are allowed to make ONE change to your category (at an additional fee), as long as the change is made before June 1. You may make a category change after June 1, however, so long as it occurs with the renewal or initial application for the current fishing year, to take effect for the beginning of the fishing year, June 1. You may check your permit's current category by calling (888) 872-8862 and following the instructions.

INFORMATION REGARDING CATEGORIES:

COMMERCIAL CATEGORIES: Commercial size tuna taken under any of these categories may be sold.

Minimum sizes for sale: **Atlantic bluefin tuna:** ≥ 73 inches total curved fork length (CFL)

Yellowfin and bigeye tuna: ≥ 27 inches CFL **Other tunas:** no minimum sizes

ATLANTIC HMS CHARTER/HEADBOAT: Owners of charter boats or headboats used to fish for, take, retain, or possess Atlantic tunas, sharks, swordfish, and billfish must obtain this permit. For bluefin tuna, anglers aboard Atlantic HMS Charter/Headboat-permitted vessels may collectively fish under either the Angling or General category daily retention limit, but not both on the same day. Commercial size tunas taken aboard vessels permitted in the Atlantic HMS Charter/ Headboat category may be sold to licensed dealers only. Authorized gear: rod & reel (including downriggers), handline, and bandit gear. For further information regarding Atlantic HMS Charter/Headboat permits please call the Northeast Regional Office HMS Division at (978) 281-9260.

ATLANTIC TUNAS LONGLINE: Vessel owners conducting longline operations that may result in the incidental taking of large medium and giant BFT or in the directed/incidental taking of other Atlantic tunas must obtain this permit. The number of Longline permits is LIMITED, i.e., a vessel owner seeking to obtain a Longline permit must obtain a Longline permit from a qualified permit holder. IMPORTANT: A total of 3 permits must be obtained to use longlines to fish for tunas: swordfish, shark, and tuna Longline permits. The shark and swordfish permits may be either directed or incidental. Directed swordfish and shark permits are subject to upgrading and ownership restrictions. For further information on swordfish and shark regulations, please call the Highly Migratory Species Management Division at (301) 713-2347. For information on transfer and upgrading procedures, please call the Southeast Regional Office Permits Division at (727) 570-5236. Authorized gear: longline only.

ATLANTIC TUNAS TRAP: Vessel owners who conduct trap operations that may result in the incidental taking of large medium and giant BFT must obtain this permit. Note that only one BFT per year may be retained. Authorized gear: pound nets and fish weirs.

ATLANTIC TUNAS GENERAL: Vessel owners who harvest Atlantic tunas, including large medium and giant BFT, by handgear and plan to sell the tuna must obtain this permit. Authorized gear: rod & reel (including downriggers), handline, harpoon, and bandit gear. For further information regarding General category regulations please call the Northeast Regional Office HMS Division at (978) 281-9260.

ATLANTIC TUNAS HARPOON: Vessel owners who conduct a commercial harpoon fishery for Atlantic tunas, including large medium and giant BFT, must obtain this permit. Vessels permitted in the Harpoon category may not participate in the General category fishery. For further information regarding Harpoon category regulations please call the Northeast Regional Office HMS Division at (978) 281-9260. Authorized gear: Harpoon only.

RECREATIONAL CATEGORY. Tuna taken under the Angling category size and retention limits MAY NOT be sold.

Minimum sizes for possession: **Atlantic bluefin tuna:** ≥ 27 inches CFL

Yellowfin and bigeye tuna: ≥ 27 inches CFL **Other tunas:** no minimum sizes

ATLANTIC HMS ANGLING: Private recreational vessel owners who harvest HMS must obtain this permit. Angling category permit holders may retain one large medium or giant “trophy” BFT per year. All BFT must be reported within 24 hours of landing to NMFS by calling (888) 872-8862. Authorized gear: rod & reel (including downriggers), handline. For further information regarding Atlantic HMS Angling permits or regulations please call the Northeast Regional Office HMS Division at (978) 281-9260.

PAPERWORK REDUCTION ACT STATEMENT: Collection of information through annual permitting serves three purposes: (1) it provides current information on the vessel owners participating in the Atlantic tuna fisheries; (2) it provides an up-to-date sampling frame that is the basis for fleet size calculations used for catch and effort estimates in fisheries that do not require mandatory reporting, thus enabling the U.S. to meet international obligations to report catch statistics for Atlantic tunas; and (3) aids NMFS in the enforcement of fishery regulations. Public reporting burden for this initial permit application of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completed & reviewing the collection of information. Permit renewals are accomplished by using an automated phone system at (888) 872-8862 or by accessing the web site at www.nmfspermits.com. Public reporting burden for renewal by telephone or web is estimated to average 6 minutes per response. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: National Marine Fisheries Service, F/SF1, 1315 East West Highway, Silver Spring, MD 20910. Providing the requested information in the permit application is mandatory for managing the Atlantic tuna fisheries in accordance with the Atlantic Tunas Convention Act (16 U.S.C. 971 et seq.) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). It is agency policy not to release confidential information, other than in aggregate form, as the Magnuson-Stevens Act protects (in perpetuity) the confidentiality of those submitting information. Summaries of permit information by category may be released. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. This is an approved information collection under OMB #0648-0327 and expires August 31, 2003.

§ 635.4

50 CFR Ch. VI (10–1–01 Edition)

(d) An activity that is otherwise prohibited by this part may be conducted if authorized as scientific research activity, exempted fishing, or exempted educational activity, as specified in § 635.32.

§ 635.4 Permits and fees.

Information on permits and permit requirements may be obtained from the Division Chief or where otherwise stated in this part.

(a) *General.* (1) *Authorized activities.* Each permit issued by NMFS authorizes certain activities, and persons may not conduct these activities without the appropriate permit, unless otherwise authorized by NMFS in accordance with this part.

(2) *Vessel permit inspection.* The owner or operator of a vessel of the United States must have the appropriate valid permit on board the vessel to fish for, take, retain, or possess Atlantic tunas, when engaged in commercial or recreational fishing, and to fish for, take, retain or possess Atlantic swordfish or sharks when engaged in commercial fishing. The vessel operator and must make such permit available for inspection upon request by NMFS or a person authorized by NMFS. The owner of the vessel is responsible for satisfying all of the requirements associated with obtaining, maintaining, and making available for inspection, all valid vessel permits.

(3) *Property rights.* Limited access vessel permits or any other permit issued pursuant to this part do not represent either an absolute right to the resource or any interest that is subject to the takings provision of the Fifth Amendment of the U.S. Constitution. Rather, limited access vessel permits represent only a harvesting privilege that may be revoked, suspended, or amended subject to the requirements of the Magnuson-Stevens Act or other applicable law.

(4) *Dealer permit inspection.* A dealer permit issued under this section, or a copy thereof, must be available at each of the dealer's places of business. A dealer must present the permit or a copy for inspection upon the request of a NMFS-authorized officer.

(5) *Display upon offloading.* Upon transfer of Atlantic HMS, the owner or

operator of the harvesting vessel must present for inspection the vessel's Atlantic tunas, shark, or swordfish permit to the receiving dealer. The permit must be presented prior to completing any applicable landing report specified at § 635.5(a)(1), (a)(2) and (b)(2)(i).

(6) *Sanctions and denials.* A permit issued under this section may be revoked, suspended, or modified, and a permit application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(7) *Alteration.* A vessel or dealer permit that is altered, erased, mutilated, or otherwise modified is invalid.

(8) *Replacement.* NMFS may issue a replacement permit upon the request of the permittee. An application for a replacement permit will not be considered a new application. An appropriate fee, consistent with paragraph (b) of this section, may be charged for issuance of the replacement permit.

(9) *Fees.* NMFS may charge a fee for each application for a permit or for each transfer or replacement of a permit. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from NMFS, for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified in the instructions provided with each application form. Each applicant must include the appropriate fee with each application or request for transfer or replacement. A permit will not be issued to anyone who fails to pay the fee.

(10) *Permit condition.* An owner issued a swordfish or shark permit pursuant to this part must agree, as a condition of such permit, that the vessel's swordfish or shark fishing, catch and gear are subject to the requirements of this part during the period of validity of the permit, without regard to whether such fishing occurs in the EEZ, or outside the EEZ, and without regard to where such swordfish or shark, or gear are possessed, taken or landed. However, when a vessel fishes within the waters of a state that has more restrictive regulations on swordfish or shark fishing, persons aboard the vessel must

abide by the state's more restrictive regulations.

(b) *HMS Charter/Headboat Permits.* (1) The owner of a charter boat or headboat used to fish for, take, retain, or possess any Atlantic HMS must obtain an HMS Charter/Headboat permit. A vessel issued an Atlantic HMS Charter/Headboat permit, during such permit's period of validity, shall not be issued an Atlantic Tunas permit in any category.

(2) While persons aboard a vessel that has been issued an HMS Charter/Headboat permit are fishing for or are in possession of Atlantic HMS, the operator of the vessel must have a valid Merchant Marine License or Uninspected Passenger Vessel License, as applicable, issued by the U.S. Coast Guard pursuant to regulations at 46 CFR part 10. Such Coast Guard license must be carried on board the vessel.

(c) [Reserved]

(d) *Atlantic Tunas vessel permits.* (1) The owner of each vessel used to fish for or take Atlantic tunas or on which Atlantic tunas are retained or possessed must obtain, in addition to any other required permits, an HMS Charter/Headboat permit issued under paragraph (b) of this section, or an Atlantic Tunas permit in one, and only one, of the following categories: Angling, General, Harpoon, Longline, Purse Seine, or Trap.

(2) Persons aboard a vessel with a valid Atlantic Tunas vessel permit or HMS Charter/Headboat permit may fish for, take, retain, or possess Atlantic tunas, but only in compliance with the quotas, catch limits, size classes, and gear applicable to the permit category of the vessel from which he or she is fishing. Persons may sell Atlantic tunas only if the harvesting vessel has a valid permit in the General, Harpoon, Longline, Purse Seine, or Trap category of the Atlantic tunas permit or a valid HMS Charter/Headboat permit. Persons may not sell Atlantic tunas caught on board a vessel issued a permit in the Angling category.

(3) Except for vessels with an Atlantic Tunas purse seine category permit, a vessel owner may change the category of the vessel's Atlantic Tunas permit or change between an Atlantic Tunas permit and the Atlantic HMS

Charter/Headboat permit no more than once each year and only from January 1 through May 15. From May 16 through December 31, the vessel's permit or permit category may not be changed, regardless of a change in the vessel's ownership.

(4) A person can obtain an Atlantic Tunas Longline category permit for a vessel only if the vessel has been issued both a limited access permit for shark and a limited access permit for swordfish. NMFS will issue Atlantic Tunas Longline category permits to qualifying vessels in calendar year 1999. Thereafter, such permits may be obtained through transfer from current owners consistent with the provisions under paragraph (1)(2) of this section.

(5) An owner of a vessel with an Atlantic Tunas permit in the Purse Seine category may transfer the permit to another purse seine vessel that he or she owns. In either case, the owner must submit a written request for transfer to NMFS, to an address designated by NMFS, and attach an application for the new vessel and the existing permit. NMFS will issue no more than 5 Atlantic Tunas Purse Seine category permits.

(e) *Shark vessel LAPs.* (1) As of July 1, 1999, the only valid Federal commercial vessel permits for shark are those that have been issued under the limited access criteria specified in § 635.16.

(2) The owner of each vessel used to fish for or take Atlantic sharks or on which Atlantic sharks are retained, possessed with an intention to sell, or sold must obtain, in addition to any other required permits, only one of two types of commercial limited access shark permits: Shark directed limited access permit or shark incidental limited access permit. See § 635.16 regarding the initial issuance of these two types of permits. It is a rebuttable presumption that the owner or operator of a vessel on which sharks are possessed in excess of the recreational retention limits intends to sell the sharks.

(3) A commercial limited access permit for sharks is not required if the vessel is recreational fishing and retains no more sharks than the recreational retention limit, is operating pursuant to the conditions of a shark

§ 635.4

50 CFR Ch. VI (10–1–01 Edition)

EFP, or that fishes exclusively within state waters.

(f) *Swordfish vessel LAPs.*

(1) The owner of each vessel used to fish for or take Atlantic swordfish or on which Atlantic swordfish are retained, possessed with an intention to sell, or sold must obtain, in addition to any other required permits, only one of three types of commercial limited access swordfish permits: swordfish directed limited access permit, swordfish incidental limited access permit, or swordfish handgear limited access permit. See §635.16 regarding the initial issuance of these three types of permits.

(2) As of July 1, 1999, the only valid commercial Federal vessel permits for swordfish are those that have been issued under the limited access criteria specified in §635.16.

(3) A commercial Federal permit for swordfish is not required if the vessel is recreational fishing.

(4) Unless the owner has been issued a swordfish handgear permit, a limited access permit for swordfish is valid only when the vessel has on board a valid limited access permit for shark and a valid Atlantic Tunas Longline category permit issued for such vessel.

(g) *Dealer permits*—(1) *Atlantic tunas.* A person that receives, purchases, trades for, or barter for Atlantic tunas from a fishing vessel of the United States or who imports or exports bluefin tuna, regardless of ocean area of origin, must possess a valid dealer permit.

(2) *Shark.* A person that receives, purchases, trades for, or barter for Atlantic sharks from a fishing vessel of the United States must possess a valid dealer permit.

(3) *Swordfish.* A person that receives, purchases, trades for, or barter for Atlantic swordfish from a fishing vessel of the United States or who imports swordfish, regardless of origin, must possess a valid dealer permit. Importation of swordfish by nonresident corporations is restricted to those entities authorized under 19 CFR 141.18.

(h) *Applications for permits.* An owner of a vessel or a dealer must submit to NMFS, at an address designated by NMFS, a complete application and required supporting documents at least

30 days before the date on which the permit is to be made effective. Application forms and instructions for their completion are available from NMFS.

(1) *Atlantic tunas vessel permits.* (i) An applicant must provide all information concerning his or her identification, vessel, gear used, fishing areas, fisheries participated in, the corporation or partnership owning the vessel, and income requirements requested by NMFS and included on the application form.

(ii) An applicant must also submit a copy of the vessel's valid U.S. Coast Guard documentation or, if not documented, a copy of its valid state registration and any other information that may be necessary for the issuance or administration of the permit as requested by NMFS. The owner must submit such information to an address designated by NMFS.

(iii) NMFS may require an applicant to provide documentation supporting the application before a permit is issued or to substantiate why such permit should not be revoked or otherwise sanctioned under paragraph (a)(7) of this section.

(2) *Limited access permits for swordfish and shark.* See §635.16 for the issuance of ILAPs for shark and swordfish. See paragraph (1) of this section for transfers of ILAPs and LAPs for shark and swordfish. See paragraph (m) of this section for renewals of LAPs for shark and swordfish.

(3) *Dealer permits.* (i) An applicant for a dealer permit must provide all the information requested on the application form necessary to identify the company, its principal place of business, and mechanisms by which the company can be contacted.

(ii) An applicant must also submit a copy of each state wholesaler's license held by the dealer and, if a business is owned by a corporation or partnership, the corporate or partnership documents requested on the application form.

(iii) An applicant must also submit any other information that may be necessary for the issuance or administration of the permit, as requested by NMFS.

(i) *Change in application information.* A vessel owner or dealer must report

any change in the information contained in an application for a permit within 30 days after such change. The report must be submitted in writing to NMFS, to an address designated by NMFS with the issuance of each permit. In the case of a vessel permit for Atlantic tunas or an HMS Charter/Headboat permit, the vessel owner or operator must report the change by phone or internet to a number or website designated by NMFS. A new permit will be issued to incorporate the new information, subject to limited access provisions specified in paragraph (1)(2) of this section. For certain information changes, NMFS may require supporting documentation before a new permit will be issued. If a change in the permit information is not reported within 30 days, the permit is void as of the 31st day after such change.

(j) *Permit issuance.* (1) NMFS will issue a permit within 30 days of receipt of a complete and qualifying application. An application is complete when all requested forms, information, and documentation have been received, including all reports and fishing or catch information required to be submitted under this part.

(2) NMFS will notify the applicant of any deficiency in the application, including failure to provide information or reports required to be submitted under this part. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(3) For issuance of ILAPs for shark and swordfish, see § 635.16.

(k) *Duration.* A permit issued under this section will be valid for the period specified on it unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904, the vessel or dealership is sold, or any other information previously submitted on the application changes, as specified in paragraph (i) of this section.

(l) *Transfer—(1) General.* A permit issued under this section is not transferable or assignable to another vessel or owner or dealer; it is valid only for the vessel or owner or dealer to whom it is issued. If a person acquires a vessel or dealership and wants to conduct activities for which a permit is re-

quired, that person must apply for a permit in accordance with the provisions of paragraph (h) of this section or, if the acquired vessel is permitted in either the shark, swordfish or tuna longline fishery, in accordance with paragraph (1)(2) of this section. If the acquired vessel or dealership is currently permitted, an application must be accompanied by the original permit and by a copy of a signed bill of sale or equivalent acquisition papers.

(2) *Shark, swordfish, and tuna longline LAPs.* (i) Subject to the restrictions on upgrading the harvesting capacity of permitted vessels in paragraph (1)(2)(ii) of this section and to the limitations on ownership of permitted vessels in paragraph (1)(2)(iii) of this section, an owner may transfer a shark or swordfish ILAP or LAP or an Atlantic Tunas Longline category permit to another vessel that he or she owns or to another person. Directed handgear ILAPs and LAPs for swordfish may be transferred to another vessel but only for use with handgear and subject to the upgrading restrictions in paragraph (1)(2)(ii) of this section and the limitations on ownership of permitted vessels in paragraph (1)(2)(iii) of this section. Incidental catch ILAPs and LAPs are not subject to the requirements specified in paragraphs (1)(2)(ii) and (1)(2)(iii) of this section.

(ii) An owner may upgrade a vessel with a shark, swordfish, or tuna longline limited access permit, or transfer the limited access permit to another vessel, and be eligible to retain or renew a limited access permit only if the upgrade or transfer does not result in an increase in horsepower of more than 20 percent or an increase of more than 10 percent in length overall, gross registered tonnage, or net tonnage from the vessel baseline specifications.

(A) The vessel baseline specifications are the respective specifications (length overall, gross registered tonnage, net tonnage, horsepower) of the first vessel that was issued an initial limited access permit or, if applicable, of that vessel's replacement owned as of May 28, 1999.

(B) The vessel's horsepower may be increased only once subsequent to the issuance of a limited access permit,

§ 635.4

50 CFR Ch. VI (10–1–01 Edition)

whether through refitting, replacement, or transfer. Such an increase may not exceed 20 percent of the horsepower of the vessel's baseline specifications, as applicable.

(C) The vessel's length overall, gross registered tonnage, and net tonnage may be increased only once subsequent to the issuance of a limited access permit, whether through refitting, replacement, or transfer. Any increase in any of these three specifications of vessel size may not exceed 10 percent of the vessel's baseline specifications, as applicable. If any of these three specifications is increased, any increase in the other two must be performed at the same time. This type of upgrade may be done separately from an engine horsepower upgrade.

(iii) No person or entity may own or control more than 5 percent of the vessels for which swordfish directed, shark directed or tuna longline limited access permits have been issued.

(iv) In order to transfer a swordfish, shark or tuna longline limited access permit to a replacement vessel, the owner of the vessel issued the limited access permit must submit a request to NMFS, at an address designated by NMFS, to transfer the limited access permit to another vessel, subject to requirements specified in paragraph (1)(2)(ii) of this section, if applicable. The owner must return the current valid limited access permit to NMFS with a complete application for a limited access permit, as specified in paragraph (h) of this section, for the replacement vessel. Copies of both vessels' U.S. Coast Guard documentation or state registration must accompany the application.

(v) For swordfish, shark, and tuna longline limited access permit transfers to a different person, the transferee must submit a request to NMFS, at an address designated by NMFS, to transfer the original limited access permit(s), subject to requirements specified in paragraphs (1)(2)(ii) and (1)(2)(iii) of this section, if applicable. The following must accompany the completed application: The original limited access permit(s) with signatures of both parties to the transaction on the back of the permit(s) and the bill of sale for the permit(s). A person

must include copies of both vessels' U.S. Coast Guard documentation or state registration for limited access permit transfers involving vessels.

(vi) For limited access permit transfers in conjunction with the sale of the permitted vessel, the transferee of the vessel and limited access permit(s) issued to that vessel must submit a request to NMFS, at an address designated by NMFS, to transfer the limited access permit(s), subject to requirements specified in paragraphs (1)(2)(ii) and (1)(2)(iii) of this section, if applicable. The following must accompany the completed application: The original limited access permit(s) with signatures of both parties to the transaction on the back of the permit(s), the bill of sale for the limited access permit(s) and the vessel, and a copy of the vessel's U.S. Coast Guard documentation or state registration.

(vii) The owner of a vessel issued a limited access permit(s) who sells the permitted vessel but retains the limited access permit(s) must notify NMFS within 30 days after the sale of the change in application information in accordance with paragraph (i) of this section. If the owner wishes to transfer the limited access permit(s) to a replacement vessel, he/she must apply according to the procedures in paragraph (1)(2)(iv) of this section.

(viii) As specified in paragraph (f)(4) of this section, a directed or incidental ILAP or LAP for swordfish, a directed or an incidental catch ILAP or LAP for shark, and an Atlantic Tunas commercial category permit are required to retain swordfish. Accordingly, a LAP for swordfish obtained by transfer without either a directed or incidental catch shark LAP or an Atlantic tunas commercial category permit will not entitle an owner or operator to use a vessel to fish in the swordfish fishery.

(ix) As specified in paragraph (d)(4) of this section, a directed or incidental ILAP or LAP for swordfish, a directed or an incidental catch ILAP or LAP for shark, and an Atlantic Tunas Longline category permit are required to retain Atlantic tunas taken by pelagic longline gear. Accordingly, an Atlantic Tunas Longline category permit obtained by transfer without either a directed or incidental catch swordfish or

shark LAP will not entitle an owner or operator to use the permitted vessel to fish in the Atlantic tunas fishery with pelagic longline gear.

(m) *Renewal*—(1) *General*. Persons must apply annually for a vessel or dealer permit for Atlantic tunas, sharks, and swordfish, and HMS Charter/Headboats. Persons must apply annually for an Atlantic tunas or HMS Charter/headboat vessel permit. A renewal application must be submitted to NMFS, at an address designated by NMFS, at least 30 days before a permit's expiration to avoid a lapse of permitted status. NMFS will renew a permit provided that the specific requirements for the requested permit are met, including those described in §635.4 (1)(2), all reports required under the Magnuson-Stevens Act and ATCA have been submitted, including those described in §635.5, and the applicant is not subject to a permit sanction or denial under paragraph (a)(6) of this section.

(2) *Shark, swordfish, and tuna longline LAPs*. As of June 1, 2000, the owner of a vessel of the United States that fishes for, possesses, lands or sells shark or swordfish from the management unit, or takes or possesses such shark or swordfish as incidental catch or that fishes for Atlantic tunas with longline gear must have the applicable limited access permit(s) issued pursuant to the requirements in §635.4, paragraphs (e) and (f). However, any ILAP that expires on June 30, 2000, is valid through that date. Only valid limited access permit holders in the preceding year are eligible for renewal of a limited access permit(s). Limited access permits that have been transferred according to the procedures of paragraph (1) of this section are not eligible for renewal by the transferor.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37703, July 13, 1999; 65 FR 47238, Aug. 1, 2000; 66 FR 30652, June 7, 2001]

EFFECTIVE DATE NOTE: At 64 FR 29137, May 28, 1999, §635.4 was added. Paragraph (b) has information collection requirements and will not become effective until Office of Management and Budget approval.

§ 635.5 Recordkeeping and reporting.

Information on HMS vessel and dealer reporting requirements may be ob-

tained from the Division Chief or where otherwise stated in this part.

(a) *Vessels*—(1) *Logbooks*. If an owner of an HMS Charter/Headboat vessel, an Atlantic Tunas vessel, or a commercial shark or swordfish vessel, for which a permit has been issued under §635.4(b), (d), (e), or (f), is selected for logbook reporting in writing by NMFS, he or she must maintain and submit a fishing record on a logbook specified by NMFS. Entries are required regarding the vessel's fishing effort and the number of fish landed and discarded. Entries on a day's fishing activities must be entered on the form within 48 hours of completing that day's activities and, for a 1-day trip, before offloading. The owner or operator of the vessel must submit the logbook form(s) postmarked within 7 days of offloading all Atlantic HMS.

(2) *Weighout slips*. If an owner of a permitted vessel is required to maintain and submit logbooks under paragraph (a)(1) of this section, and Atlantic HMS harvested on a trip are sold, the owner or operator must obtain and submit copies of weighout slips for those fish. Each weighout slip must show the dealer to whom the fish were transferred, the date they were transferred, and the carcass weight of each fish for which individual weights are normally recorded. For fish that are not individually weighed, a weighout slip must record total weights by species and market category. A weighout slip for sharks prior to or as part of a commercial transaction involving shark carcasses or fins must record the weights of carcasses and any detached fins. The owner or operator must also submit copies of weighout slips with the logbook forms required to be submitted under paragraph (a)(1) of this section.

(3) *BFT not sold*. If a person who catches and lands a large medium or giant BFT from a vessel issued a permit in any of the commercial categories for Atlantic tunas does not sell or otherwise transfer the BFT to a dealer who has a dealer permit for Atlantic tunas, the person must contact a NMFS enforcement agent, at a number designated by NMFS, immediately

Sec. 971. Definitions

For the purpose of this chapter -

- (1) The term "Convention" means the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro May 14, 1966, including any amendments or protocols which are or become effective for the United States.
- (2) The term "Commission" means the International Commission for the Conservation of Atlantic Tunas provided for in article III of the Convention.
- (3) The term "conservation recommendation" means any recommendation of the Commission made pursuant to Article VIII of the Convention and acted upon favorably by the Secretary of State under section [971c](#)(a) of this title.
- (4) The term "Council" means the Council established within the International Commission for the Conservation of Atlantic Tunas pursuant to article V of the Convention.
- (5) The term "exclusive economic zone" means an exclusive economic zone as defined in section [1802](#) of this title.
- (6) The term "fishing" means the catching, taking, or fishing for or the attempted catching, taking, or fishing for any species of fish covered by the Convention, or any activities in support thereof.
- (7) The term "fishing vessel" means any vessel engaged in catching fish or processing or transporting fish loaded on the high seas, or any vessel outfitted for such activities.
- (8) The term "Panel" means any panel established by the Commission pursuant to article VI of the Convention.
- (9) The term "person" means every individual, partnership, corporation, and association subject to the jurisdiction of the

United States.

- (10) The term "Secretary" means the Secretary of Commerce.
- (11) The term "State" includes each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

Sec. 971a. Commissioners

- (a) Appointment and number; selection of Chairman; rules of procedure; term
 - (1) The United States shall be represented by not more than three Commissioners who shall serve as delegates of the United States on the Commission, and who may serve on the Council and Panels of the Commission as provided for in the Convention. Such Commissioners shall be appointed by and serve at the pleasure of the President. Not more than one such Commissioner shall be a salaried employee of any State or political subdivision thereof, or the Federal Government. Individuals serving as such Commissioners shall not be considered to be Federal employees while performing such service, except for purposes of injury compensation or tort claims liability as provided in chapter [81](#) of title 5 and chapter [171](#) of title 28. The Commissioners shall be entitled to select a Chairman and to adopt such rules of procedure as they find necessary.
 - (2) Of the Commissioners appointed under paragraph (1) who are not governmental employees -
 - (A) one shall be appointed from among individuals with knowledge and experience regarding commercial fishing in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea; and
 - (B) one shall be appointed from among individuals with knowledge and experience regarding recreational fishing in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea.
 - (3)
 - (A) The term of a Commissioner shall be three years.
 - (B) An individual appointed in accordance with paragraph (2) shall not be eligible to serve more than two consecutive terms as a Commissioner.
- (b) Alternate Commissioners

The Secretary of State, in consultation with the Secretary, may designate from time to time and for periods of time deemed appropriate Alternate United States Commissioners to the Commission. Any Alternate United States Commissioner may exercise at any meeting of the Commission, Council, any Panel, or the advisory committee established pursuant to section [971b](#) of this title, all powers and duties of a United States Commissioner in the absence of any Commissioner appointed pursuant to subsection (a) of this section for whatever reason. The number of such Alternate United States Commissioners that may be designated for any such meeting shall be limited to the number of United States Commissioners appointed pursuant to subsection (a) of this section who will not be present at such meeting.
- (c) Compensation

The United States Commissioners or Alternate Commissioners, although officers of the United States while so serving, shall receive no compensation for their services as such Commissioners

or Alternate Commissioners.

- (d) Travel expenses
 - (1) The Secretary of State shall pay the necessary travel expenses of United States Commissioners, Alternate United States Commissioners, and authorized advisors in accordance with the Federal Travel Regulations and sections [5701](#), [5702](#), 5704 through 5708, and 5731 of title 5.
 - (2) The Secretary may reimburse the Secretary of State for amounts expended by the Secretary of State under this subsection.

Sec. 971b. Advisory committee

- (a) There is established an advisory committee which shall be composed of -
 - (1) not less than five nor more than twenty individuals appointed by the United States Commissioners who shall select such individuals from the various groups concerned with the fisheries covered by the Convention; and
 - (2) the chairmen (or their designees) of the New England, Mid-Atlantic, South Atlantic, Caribbean, and Gulf Fishery Management Councils established under section 302(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)). Each member of the advisory committee appointed under paragraph (1) shall serve for a term of two years and shall be eligible for reappointment. Members of the advisory committee may attend all public meetings of the Commission, Council, or any Panel and any other meetings to which they are invited by the Commission, Council, or any Panel. The advisory committee shall be invited to attend all nonexecutive meetings of the United States Commissioners and at such meetings shall be given opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the Commission. Members of the advisory committee shall receive no compensation for their services as such members. The Secretary and the Secretary of State may pay the necessary travel expenses of members of the advisory committee in accordance with the Federal Travel Regulations and sections [5701](#), [5702](#), 5704 through 5708, and 5731 of title 5.
- (b)
 - (1) A majority of the members of the advisory committee shall constitute a quorum, but one or more such members designated by the advisory committee may hold meetings to provide for public participation and to discuss measures relating to the United States implementation of Commission recommendations.
 - (2) The advisory committee shall elect a Chairman for a 2-year term from among its members.
 - (3) The advisory committee shall meet at appropriate times and places at least twice a year, at the call of the Chairman or upon the request of the majority of its voting members, the United States Commissioners, the Secretary, or the Secretary of State. Meetings of the advisory committee, except when in executive session, shall be open to the public, and prior notice of meetings shall be made public in a timely fashion.
 - (4)
 - (A) The Secretary shall provide to the advisory committee in a timely manner such administrative and technical support services as are necessary for the effective functioning of the committee.
 - (B) The Secretary and the Secretary of State shall furnish the advisory committee

with relevant information concerning fisheries and international fishery agreements.

- (5) The advisory committee shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this chapter, the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), and the Convention. The advisory committee shall publish and make available to the public a statement of its organization, practices, and procedures.
- (6) The advisory committee shall, to the maximum extent practicable, consist of an equitable balance among the various groups concerned with the fisheries covered by the Convention and shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

Sec. 971b-1. Species working groups

The United States Commissioners may establish species working groups for the purpose of providing advice and recommendations to the Commissioners and the advisory committee on matters relating to the conservation and management of any highly migratory species covered by the Convention. Any species working group shall consist of no more than seven members of the advisory committee and no more than four scientific or technical personnel, as considered necessary by the Commissioner.

Sec. 971c. Authority of Secretary of State; cooperative enforcement agreements

- (a) Recommendations from Commission

The Secretary of State is authorized to receive on behalf of the United States, reports, requests, and other communications of the Commission, and to act thereon directly or by reference to the appropriate authorities. The Secretary of State, with the concurrence of the Secretary and, for matters relating to enforcement, the Secretary of the department in which the Coast Guard is operating, is authorized to take appropriate action on behalf of the United States with regard to recommendations received from the Commission pursuant to article VIII of the Convention. The Secretary and, when appropriate, the Secretary of the department in which the Coast Guard is operating, shall inform the Secretary of State as to what action he considers appropriate within five months of the date of the notification of the recommendation from the Commission, and again within forty-five days of the additional sixty-day period provided by the Convention if any objection is presented by another contracting party to the Convention, or within thirty days of the date of the notification of an objection made within the additional sixty-day period, whichever date shall be the later. After any notification from the Commission that an objection of the United States is to be considered as having no effect, the Secretary shall inform the Secretary of State as to what action he considers appropriate within forty-five days of the sixty-day period provided by the Convention for reaffirming objections. The Secretary of State shall take steps under the Convention to insure that a recommendation pursuant to article VIII of the Convention does not become effective for the United States prior to its becoming effective for all contracting parties conducting fisheries affected by such recommendation on a meaningful scale in terms of their effect upon the success of the conservation program, unless he determines, with the concurrence of the Secretary, and, for matters relating to enforcement, the Secretary of the department in which the Coast Guard is operating, that the purposes of the Convention would be served by allowing a recommendation to take effect for the United States at some earlier time.

- (b) Enforcement agreements

The Secretary of State, in consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, is authorized to enter into agreements with any contracting party, pursuant to paragraph 3 of article IX of the Convention, relating to cooperative enforcement of the provisions of the Convention, recommendations in force for the United States and such party or parties under the Convention, and regulations adopted by the United States and such contracting party or parties pursuant to recommendations of the Commission. Such agreements may authorize personnel of the United States to enforce measures under the Convention and under regulations of another party with respect to persons under that party's jurisdiction, and may authorize personnel of another party to enforce measures under the Convention and under United States regulations with respect to persons subject to the jurisdiction of the United States. Enforcement under such an agreement may not take place within the territorial seas or exclusive economic zone of the United States. Such agreements shall not subject persons or vessels under the jurisdiction of the United States to prosecution or assessment of penalties by any court or

tribunal of a foreign country.

Sec. 971d. Administration

- (a) Regulations; cooperation with other parties to Convention; utilization of personnel, services, and facilities for enforcement

The Secretary is authorized and directed to administer and enforce all of the provisions of the Convention, this chapter, and regulations issued pursuant thereto, except to the extent otherwise provided for in this chapter. In carrying out such functions the Secretary is authorized and directed to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and this chapter, and with the concurrence of the Secretary of State, he may cooperate with the duly authorized officials of the government of any party to the Convention. In addition, the Secretary may utilize, with the concurrence of the Secretary of the department in which the Coast Guard is operating insofar as such utilization involves enforcement at sea, with or without reimbursement and by agreement with any other Federal department or agency, or with any agency of any State, the personnel, services, and facilities of that agency for enforcement purposes with respect to any vessel in the exclusive economic zone, or wherever found, with respect to any vessel documented under the laws of the United States, and any vessel numbered or otherwise licensed under the laws of any State. When so utilized, such personnel of the States of the United States are authorized to function as Federal law enforcement agents for these purposes, but they shall not be held and considered as employees of the United States for the purposes of any laws administered by the Director of the Office of Personnel Management.

- (b) Primary enforcement responsibility

Enforcement activities at sea under the provisions of this chapter for fishing vessels subject to the jurisdiction of the United States shall be primarily the responsibility of the Secretary of the department in which the Coast Guard is operating, in cooperation with the Secretary and the United States Customs Service. The Secretary after consultation with the Secretary of the department in which the Coast Guard is operating, shall adopt such regulations as may be necessary to provide for procedures and methods of enforcement pursuant to article IX of the Convention.

- (c) Regulations and other measures to carry out Commission recommendations

- (1)

- (A) Upon favorable action by the Secretary of State under section [971c](#)(a) of this title on any recommendation of the Commission made pursuant to article VIII of the Convention, the Secretary shall promulgate, pursuant to this subsection, such regulations as may be necessary and appropriate to carry out such recommendation.
- (B) Not later than June 30, 1991, the Secretary shall promulgate any additional regulations necessary to ensure that the United States is in full compliance with all recommendations

made by the Commission that have been accepted by the United States and with other agreements under the Convention between the United States and any nation which is a party to the Convention.

- (C) Regulations promulgated under this paragraph shall, to the extent practicable, be consistent with fishery management plans prepared and implemented under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).
- (2) To promulgate regulations referred to in paragraph (1) of this subsection, the Secretary shall publish in the Federal Register a general notice of proposed rulemaking and shall afford interested persons an opportunity to participate in the rulemaking through (A) submission of written data, views, or arguments, and (B) oral presentation at a public hearing. Such regulations shall be published in the Federal Register and shall be accompanied by a statement of the considerations involved in the issuance of the regulations, and by a statement, based on inquiries and investigations, assessing the nature and effectiveness of the measures for the implementation of the Commission's recommendations which are being or will be carried out by countries whose vessels engage in fishing the species subject to such recommendations within the waters to which the Convention applies. After publication in the Federal Register, such regulations shall be applicable to all vessels and persons subject to the jurisdiction of the United States on such date as the Secretary shall prescribe. The Secretary shall suspend at any time the application of any such regulation when, after consultation with the Secretary of State and the United States Commissioners, he determines that fishing operations in the Convention area of a contracting party for whom the regulations are effective are such as to constitute a serious threat to the achievement of the Commission's recommendations.
- (3) The regulations required to be promulgated under paragraph (1) of this subsection may -
 - (A) select for regulation one or more of the species covered by the Convention;
 - (B) divide the Convention waters into areas;
 - (C) establish one or more open or closed seasons as to each such area;
 - (D) limit the size of the fish and quantity of the catch which may be taken from each area within any season during which fishing is allowed;
 - (E) limit or prohibit the incidental catch of a regulated species which may be retained, taken, possessed, or landed by vessels or persons fishing for other species of fish;
 - (F) require records of operations to be kept by any master or other person in charge of any fishing vessel;
 - (G) require such clearance certificates for vessels as may be necessary to carry out the purposes of the Convention and this chapter;
 - (H) require proof satisfactory to the Secretary that any fish subject to regulation pursuant to a recommendation of the

Commission offered for entry into the United States has not been taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention which have been adopted as regulations pursuant to this section;

- (I) require any commercial or recreational fisherman to obtain a permit from the Secretary and report the quantity of the catch of a regulated species;
 - (J) require that observers be carried aboard fishing vessels for the purpose of providing statistically reliable scientific data; and
 - (K) impose such other requirements and provide for such other measures as the Secretary may determine necessary to implement any recommendation of the Convention or to obtain scientific data necessary to accomplish the purpose of the Convention; except that no regulation promulgated under this section may have the effect of increasing or decreasing any allocation or quota of fish or fishing mortality level to the United States agreed to pursuant to a recommendation of the Commission.
- (4) Upon the promulgation of regulations provided for in paragraph (3) of this subsection, the Secretary shall promulgate, with the concurrence of the Secretary of State and pursuant to the procedures prescribed in paragraph (2) of this subsection, additional regulations which shall become effective simultaneously with the application of the regulations provided for in paragraph (3) of this subsection, which prohibit -
 - (A) the entry into the United States of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the Convention area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission; and
 - (B) the entry into the United States, from any country when the vessels of such country are being used in the conduct of fishing operations in the Convention area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the Convention area.
 - (5) In the case of repeated and flagrant fishing operations in the Convention area by the vessels of any country which seriously threaten the achievement of the objectives of the Commission's recommendations, the Secretary with the concurrence of the Secretary of State, may by regulations promulgated pursuant to paragraph (2) of this subsection prohibit the entry in any form from such country of other species covered by the Convention as may be under investigation

by the Commission and which were taken in the Convention area. Any such prohibition shall continue until the Secretary is satisfied that the condition warranting the prohibition no longer exists, except that all fish in any form of the species under regulation which were previously prohibited from entry shall continue to be prohibited from entry.

- (6) Identification and notification. -
 - (A) Not later than July 1, 1996, and annually thereafter, the Secretary, in consultation with the Secretary of State, the Commissioners, and the advisory committee, shall -
 - (i) identify those nations whose fishing vessels are fishing, or have fished during the preceding calendar year, within the convention area in a manner or under circumstances that diminish the effectiveness of a conservation recommendation;
 - (ii) notify the President and the nation so identified, including an explanation of the reasons therefor; and
 - (iii) publish a list of those Nations identified under clause
 - (i) notify the President and the nation so identified,
 - (B) In identifying those Nations, the Secretary shall consider, based on the best available information, whether those Nations have measures in place for reporting, monitoring, and enforcement, and whether those measures diminish the effectiveness of any conservation recommendation.
 - (7) Consultation. - Not later than 30 days after a Nation is notified under paragraph (6), the President may enter into consultations with the Government of that Nation for the purpose of obtaining an agreement that will -
 - (A) effect the immediate termination and prevent the resumption of any fishing operation by vessels of that Nation within the Convention area which is conducted in a manner or under circumstances that diminish the effectiveness of the conservation recommendation;
 - (B) when practicable, require actions by that Nation, or vessels of that Nation, to mitigate the negative impacts of fishing operations on the effectiveness of the conservation recommendation involved, including but not limited to, the imposition of subsequent-year deductions for quota overages; and
 - (C) result in the establishment, if necessary, by such Nation of reporting, monitoring, and enforcement measures that are adequate to ensure the effectiveness of conservation recommendations.
- (d) Recommended Commission actions regarding large-scale driftnet fishing and conservation of Atlantic swordfish
 - (1) It is the sense of the Congress that the Secretary, in consultation with the Secretary of

State, should seek support for a recommendation by the Commission to ban large-scale driftnet fishing (as that term is defined in section [3](#)(16) [11](#) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(16))) in the Convention area.

- (2) The Secretary, in consultation with the Secretary of State, shall request the Commission to adopt recommendations necessary for the conservation and management of Atlantic swordfish. In making the request, the Secretary shall seek the establishment of an international minimum harvest size and a reduction in harvest levels to the extent necessary to conserve the stock. Until the Commission adopts all the conservation and management measures requested by the Secretary, the Secretary, within 3 months after each annual meeting of the Commission, shall notify Congress as to the nature and results of his request. These notifications shall identify those nations not acting to conserve and manage Atlantic swordfish, and recommend measures which could be taken to achieve effective international conservation and management of the stock.
-

Sec. 971e. Violations

- (a) In general

It shall be unlawful -

- (1) for any person in charge of a fishing vessel or any fishing vessel subject to the jurisdiction of the United States to engage in fishing in violation of any regulation adopted pursuant to section [971d](#) of this title; or
- (2) for any person subject to the jurisdiction of the United States to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish which he knows, or should have known, were taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention and adopted as regulations pursuant to section [971d](#) of this title, without regard to the citizenship of the person or vessel which took the fish.

- (b) Failure to furnish returns, records, or reports

It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to fail to make, keep, or furnish any catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this chapter to be made, kept, or furnished by such master or person.

- (c) Refusal of request to board and inspect vessel

It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to refuse to permit any person authorized to enforce the provisions of this chapter and any regulations adopted pursuant thereto, to board such vessel and inspect its catch, equipment, books, documents, records, or other articles or question the persons onboard in accordance with the provisions of this chapter, or the Convention, as the case may be, or to obstruct such officials in the execution of such duties.

- (d) Importation of ineligible species or species under investigation

It shall be unlawful for any person to import, in violation of any regulation adopted pursuant to section [971d](#)(c) or (d) (FOOTNOTE 1) of this title, from any country, any fish in any form of those species subject to regulation pursuant to a recommendation of the Commission, or any fish in any form not under regulation but under investigation by the Commission, during the period such fish have been denied entry in accordance with the provisions of section [971d](#)(c) or (d) [11](#) of this title. In the case of any fish as described in this subsection offered for entry in the United States, the Secretary shall require proof satisfactory to him that such fish is not ineligible for such

entry under the terms of section [971d](#)(c) or (d) [\[1\]](#) of this title.

- (e) Sanctions

The civil penalty and permit sanctions of section [1858](#) of this title are hereby made applicable to violations of this section as if they were violations of section [1857](#) of this title.

- (f) Forfeiture

All fish taken or retained in violation of subsection (a) of this section, or the monetary value thereof, may be forfeited.

- (g) Applicability of other laws

All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this chapter.

Footnotes

[\[1\]](#) See References in Text note below.

Sec. 971f. Enforcement

- (a) Particular powers

Any person authorized in accordance with the provisions of this chapter to enforce the provisions of this chapter and the regulations issued thereunder may -

- (1) with or without a warrant, board any vessel subject to the jurisdiction of the United States and inspect such vessel and its catch and, if as a result of such inspection, he has reasonable cause to believe that such vessel or any person on board is engaging in operations in violation of this chapter or any regulations issued thereunder, he may, with or without a warrant or other process, arrest such person;
- (2) arrest, with or without a warrant, any person who violates the provisions of this chapter or any regulation issued thereunder in his presence or view;
- (3) execute any warrant or other process issued by an officer or court of competent jurisdiction; and
- (4) seize, whenever and wherever lawfully found, all fish taken or retained by a vessel subject to the jurisdiction of the United States in violation of the provisions of this chapter or any regulations issued pursuant thereto. Any fish so seized may be disposed of pursuant to an order of a court of competent jurisdiction, or, if perishable, in a manner prescribed by regulation of the Secretary.

- (b) International enforcement

To the extent authorized under the convention or by agreements between the United States and any contracting party concluded pursuant to section [971c](#)(b) of this title for international enforcement, the duly authorized officials of such party shall have the authority to carry out the enforcement activities specified in subsection (a) of this section with respect to persons or vessels subject to the jurisdiction of the United States, and the officials of the United States authorized pursuant to this section shall have the authority to carry out the enforcement activities specified in subsection (a) of this section with respect to persons or vessels subject to the jurisdiction of such party, except that where any agreement provides for arrest or seizure of persons or vessels under United States jurisdiction it shall also provide that the person or vessel arrested or seized shall be promptly handed over to a United States enforcement officer or another authorized United States official.

- (c) Bonds or stipulations

Notwithstanding the provisions of section [2464](#) of title 28, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshal or other officer shall stay the

execution of such process, or discharge any fish seized if the process has been levied, on receiving from the claimant of the fish a bond or stipulation for the value of the property with sufficient surety to be approved by a judge of the district court having jurisdiction of the offense, conditioned to deliver the fish seized, if condemned, without impairment in value or, in the discretion of the court, to pay its equivalent value in money or otherwise to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in event of any breach of the conditions thereof as determined by the court. In the discretion of the accused, and subject to the direction of the court, the fish may be sold for not less than its reasonable market value at the time of seizure and the proceeds of such sale placed in the registry of the court pending judgment in the case.

Sec. 971g. Cooperation in carrying out Convention

- (a) Federal and State agencies; private institutions and organizations

The United States Commissioners, through the Secretary of State and with the concurrence of the agency, institution, or organization concerned, may arrange for the cooperation of agencies of the United States Government, and of State and private institutions and organizations in carrying out the provisions of article IV of the Convention.

- (b) Scientific and other programs; facilities and personnel

All agencies of the Federal Government are authorized, upon the request of the Commission, to cooperate in the conduct of scientific and other programs, and to furnish facilities and personnel for the purpose of assisting the Commission in carrying out its duties under the Convention.

- (c) Fishing operations and biological experiments

None of the prohibitions deriving from this chapter, or contained in the laws or regulations of any State, shall prevent the Commission from conducting or authorizing the conduct of fishing operations and biological experiments at any time for purposes of scientific investigation, or shall prevent the Commission from discharging any other duties prescribed by the Convention.

- (d) State jurisdiction; preemption by Federal regulations

- (1) Except as provided in paragraph (2) of this subsection, nothing in this chapter shall be construed so as to diminish or to increase the jurisdiction of any State in the territorial sea of the United States.
- (2) In the event a State does not request a formal hearing and after notice by the Secretary, the regulations promulgated pursuant to this chapter to implement recommendations of the Commission shall apply within the boundaries of any State bordering on any Convention area if the Secretary determines that any such State -
 - (A) has not, within a reasonable period of time after the promulgation of regulations pursuant to this chapter, enacted laws or promulgated regulations which implement any such recommendation of the Commission within the boundaries of such State; or
 - (B) has enacted laws or promulgated regulations which (i) are less restrictive than the regulations promulgated pursuant to this chapter, or (ii) are not effectively enforced. If a State requests the opportunity for an agency hearing on the record, the Secretary shall not apply regulations promulgated pursuant to this chapter within that State's boundaries unless the hearing record supports a determination under paragraph (A) or (B). Such regulations shall apply until the Secretary determines that the State is effectively enforcing within its boundaries measures which are not less restrictive than such

regulations.

- (e) Continuing review of State laws and regulations

To insure that the purposes of subsection (d) of this section are carried out, the Secretary shall undertake a continuing review of the laws and regulations of all States to which subsection (d) of this section applies or may apply and the extent to which such laws and regulations are enforced.